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McGuireWoods: California Proposes Rules Clarifying Notice and Review Requirements for Health Care Transactions

On July 31, 2023, the California Office of Health Care Affordability (OHCA) issued [proposed regulations](#) requiring health care entities to notify OHCA about material transactions at least 90 days prior to closing. McGuireWoods previously published an alert on California's advance notice and review requirements and the potential implications for health care transactions occurring in California on or after April 1, 2024.

California is one of many states to implement reporting requirements for health care transactions. Several other states such as New York, Oregon and Washington have similar laws and requirements. McGuireWoods continues to monitor these developments and analyze the impacts of such laws, most recently on [June 5](#) and [May 8, 2023](#).

Key Takeaways

1. By expanding the definition of "health care entity" to include entities like management services organizations, broadening of the definition of "material transactions" and potentially extending review timelines, OHCA will play an extensive role in future transactions.
2. Health care providers and entities operating in California that are planning or considering entering into a transaction now must consider the advance notice filing requirement, review process and additional timing components when planning a transaction. This will include preparing documents and compiling significant amounts of information to submit the notice filing in advance of the 60-day initial waiting period for OHCA to determine whether to conduct a cost and market impact review (CMIR), and a potential additional 90-day waiting period if OHCA chooses to undertake a CMIR.
3. Health care providers and entities subject to the advance notice and review requirements must provide information about the entities undergoing the proposed transaction and submit copies of documents such as structure charts and transaction agreements. By default, OHCA will consider such information and documents as public records, but a submitter may mark certain documents as confidential or redact certain information, and OHCA will deem confidentially marked documents such as purchase agreements, financial documents and unredacted resumes as confidential.
4. Parties making filings must consider the antitrust and other market implications of a transaction in advance of their submission and be able to credibly address the impact of the transaction on competition, cost of care, quality of care, health equity, innovation and access to care. Failing to adequately develop a strategy that takes account of these aspects of a transaction in an initial filing can increase the odds that OHCA will undertake a CMIR, which involves significant additional delay, expense, disruption and the risk that OHCA may refer the matter to the Office of the Attorney General for additional action.
5. These proposed regulations provide additional details on the requirements and process, and they provide more details to the language of the statutes. Stakeholders may submit comments on the proposed regulations to CMIR@HCAI.CA.GOV until 5 p.m. on Aug. 31, 2023. It is unclear if the public should expect further changes, but OHCA intends to submit the finalized regulations as an

emergency rulemaking package in October 2023.

[Continue reading.](#)

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